

CHARGE: 403(a)—when shipped and while held for sale, the labeling of the article contained false and misleading representations that two heaping teaspoonsful (1 oz.) of the article would supply significant amounts of quick energy because it contained protein; would satisfy hunger and significantly improve nutrition while reducing calories; was high in protein although low in calories; was instant protein and a natural protein concentrate; and that other complete proteins on the market were not balanced proteins; 403(a)—the statement "Chocolate" was false and misleading since the article did not contain chocolate; and 403(j)—the article purported to be and was represented as a food for special dietary use and its label failed to bear such information concerning its dietary properties as the Secretary has determined to be, and by regulations prescribed as necessary, since the article contained the nonnutritive artificial sweetener, sodium cyclamate, and its label failed to bear, as required by regulations, a statement of the percent by weight of such constituent, and, in juxtaposition with the name of such constituent, the word "nonnutritive."

The article was alleged also to be misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7108.

DISPOSITION: 4-30-62. Consent—claimed by Rexall Drug & Chemical Co. and released under bond for relabeling.

28796. Nutri-Seal Admix. (F.D.C. No. 44689. S. No. 43-563 R.)

QUANTITY: 54 cases, each containing 4 1-gal. btls. of Nutri-Seal Admix at Caldwell, Idaho; and 10 1-gal. btls. of Nutri-Seal Admix and 1,160 ½-gal. ctns. of a 2 percent skim milk product containing Nutri-Seal Admix at Boise and Nampa, Idaho, in possession of Home Dairies Co.

SHIPPED: Between 9-8-59 and 6-21-60, from Los Angeles, Calif., by Nutri-Seal Corp.

LABEL IN PART: (Btl.) "Net Contents 128 Fluid Ounces 9-Vitamin Concentrate Nutri-Seal Admix, Nutri-Seal Corporation, * * * Los Angeles 19, California" and (ctn. of the 2 percent skim milk product containing the Admix) "Home Dairies Enriched Fortified 2% Lo-Fat with Nutri-Seal 9-Vitamins * * * Grade 'A' Fortified and Enriched Skim Milk."

ACCOMPANYING LABELING: Folders reading in part "Home Dairies, Nature's Finest, Most Complete Food" and "Home Dairies Enthusiastically Announces"; and 24 cases, each containing 300 empty ½-gal. cartons which bore labels that were the same as the label on the above-described cartons.

RESULTS OF INVESTIGATION: The accompanying labeling had been printed for Home Dairies Co. and was used in promoting sales of the 2 percent skim milk product containing the Nutri-Seal Admix.

All of the Nutri-Seal Admix had been shipped to Caldwell, Idaho, consigned to the shipper, Nutri-Seal Corp. Some of the Admix had been distributed to Home Dairies Co. after which a portion was incorporated into the 2 percent skim milk product.

LIBELED: 7-1-60, Dist. Idaho; amended libel on or about 11-28-61.

CHARGE: (Original libel), 403(a)—while held for sale, the labeling of the Nutri-Seal Admix at Boise and Nampa, Idaho, both before and after being mixed with the 2 percent skim milk product contained false and misleading representations that "2% Lo-Fat * * * Skim Milk" with "Nutri-Seal Admix" added was more nutritious than whole milk, that the article was low in fat and low in calories, that the natural vitamins in milk were in the butterfat and that if the butterfat content was reduced, all such vitamins were also reduced, that the "Nutri-Seal Admix" was recommended by the U.S. Food and Drug Administration and the National Research Council to be added to 2 percent skim milk, that the "Nutri-Seal Admix," when added to 2 percent skim milk, would act as an antioxidant to preserve unsaturated fatty acids in the body, and would promote protein, fat, and cellular metabolism in the body, and that the foods listed in the chart in the folder entitled "Home Dairies Nature's Finest Most Complete Food," of vitamins A, D₂, E, C, B₁, B₂, B₆, niacinamide, and pantothenol in the articles were the "Sources" of such vitamins; and (amendment to libel), 403(a)—when shipped, the labeling of the Nutri-Seal Admix at Caldwell, Idaho, contained statements which were misleading since they suggested that the article, a vitamin concentrate, was suitable as an addition to cottage cheese and to creamed cottage cheese, whereas regulations did not permit the addition of vitamins to such foods.

The libel alleged also that the article was misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7083.

DISPOSITION: On 12-6-60, a default decree of condemnation was entered against the 1-gal. btls. of Nutri-Seal Admix and 1/2-gal. cartons of the 2 percent skim milk product containing the Admix which were in possession of Home Dairies Co., at Boise and Nampa, Idaho. The decree provided that such articles should be destroyed except for 4 1-gal. bottles of the Admix, 25 empty half gal. cartons of 2 percent skim milk product and a number of folders which should be delivered to the Food and Drug Administration.

On 3-27-61, the Home Dairies Co., having filed claim for the 1/2-gal. empty milk cartons, a decree amending the decree of 12-6-60, was entered providing for the release under bond of the cartons for purpose of salvage.

On 11-30-61, the Nutri-Seal Corp., claimant for the 54 cases of Nutri-Seal Admix at Caldwell, Idaho, having denied that the article was misbranded as alleged in the original libel but not denying that the labeling contained statements that the article was suitable as an addition to cottage cheese as alleged in the amendment to the libel and having consented to the entry of the decree, judgment of condemnation was entered and the article was ordered released under bond for relabeling in compliance with the law. On 6-22-62, the claimant having decided not to relabel the article and agreeing to its disposition within the discretion of the court, an order was entered for destruction of the article.

28797. Eastrone solution for poultry. (F.D.C. No. 48032. S. No. 79-853 T.)

QUANTITY: 21 300-cc. btls. and 35 30-cc. btls. at St. Paul, Minn.

SHIPPED: 3-22-61 and 3-19-62, from Vineland, N.J., by Eastern Laboratories, Inc.